

#16
8/15/02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant:	Kenneth S. Knapton III	§	Group Art Unit:	2762
Serial No.:	09/089,834	§	Examiner:	C. Das
Filed:	June 3, 1998	§	Atty. Dkt. No.:	ITL.0033US
For:	Binary Compatible Software Objects	§		(P5395)
		§	Appeal No.	2000-2227

Commissioner for Patents
Board of Patent Appeals and Interferences
Washington, D.C. 20231

REQUEST FOR RECONSIDERATION

In the Board's decision in this matter, the Board indicates that the Applicant's attorney failed to address a Section 112 rejection. Decision, page 4. Therefore, without consideration on the merits, the Board affirmed *pro forma* the Examiner. *Id.*

However, it is respectfully submitted that the rules require that the Examiner object to the brief when the Applicant's attorney has failed to address a point of rejection. As stated in the M.P.E.P., "where an appeal brief fails to address any ground of rejection, the appellant shall be notified by the Examiner that he or she must correct the defect by filing a brief (in triplicate) in compliance with 37 C.F.R. § 1.192(c)." See M.P.E.P. § 1206 at page 1200-8 and 37 C.F.R. § 1.192(d) (Emphasis added).

Here, the Examiner failed to comply with this clear requirement. In view of the Examiner's failure to comply with the rules, the appropriate course is to remand the matter to the Examiner or to require appellant to address the matter. See M.P.E.P. § 1211, 1212. The

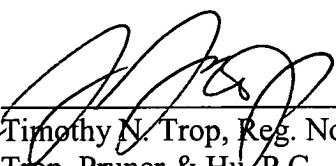
Date of Deposit: August 8, 2002
I hereby certify under 37 CFR 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to the Commissioner for Patents, Washington, DC 20231.
Cynthia L. Hayden
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Examiner then could have made the appropriate requirement to correct the brief. Once the brief was corrected, the matter could then have been considered on appeal.

Therefore, the Appellant hereby requests the Board to withdraw its decision and remand the matter to the Examiner to correct the brief.

Respectfully submitted,

Date: August 8, 2002



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